

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**



**First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Repairing Standard Enforcement Order  
Housing (Scotland) Act 2006: Section 24**

**Case Reference FTS/HPC/RT/18/1192**

**Mr and Mrs William Thomson, 7 Spinney Court, Locharbriggs, Heathhall, Dumfries,  
DG1 1XN per their Attorneys Sharron Knight and Lesley Fuentes ("the Tenant")**

**Ms Annie McCormick, The Orchard, Amisfield, Dumfries, DG1 3LW per her Attorney  
Peter Murray ("the Landlord")**

**Strategic Housing Services, Dumfries and Galloway Council, Council Offices,  
Buccleuch Street, Dumfries, DG1 2AD ("the Third Party Applicant").**

**7 Spinney Court, Locharbriggs, Heathhall, Dumfries, DG1 1XN registered under Title  
Number DMF4865 ("the Property").**

**Tribunal Members: Martin McAllister (Legal Member) and Donald Wooley, Chartered  
Surveyor, (Ordinary Member)**

### **NOTICE TO**

**Ms Annie McCormick**

Whereas in terms of its decision dated 13<sup>th</sup> August 2018, the First-tier Tribunal for Scotland (Housing and Property Chamber) (the Tribunal) determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (the 2006 Act) and, in particular, that the Landlord has failed, in terms of Section 13 of the said Act to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation and that the structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and proper working order, the Tribunal now makes a repairing standard enforcement order (RSEO) and requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing standard in terms of Section 13 of the said Act and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the tribunal requires the following:

The Landlord to:

- (1) Instruct a suitably qualified contractor to inspect the ridge tiles and chimney head, in order to identify and report on the cause of the damp staining within the roof void and detail the extent of any necessary remedial action. Thereafter the contractor should complete all necessary repairs to remedy the dampness and any associated defects. (Sections 13 (1) (a) and 13 (1) (b) of the 2006 Act).**
- (2) Renew or repair all sections of decayed timber fascia boarding at the front porch projection and redecorate as necessary. (Section 13 (1) (b) of the 2006 Act).**
- (3) Remove all debris and vegetation from the rain water goods and ensure that they are returned to good working order and free from defects. (Section 13 (1) (b) of the 2006 Act).**

**The Landlord requires to comply with the repairing standard order by 30<sup>th</sup> September 2018.**

**In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

**Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

**Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.**

**In witness whereof these presents are signed at Kilwinning on 13<sup>th</sup> August 2018 by Martin J. McAllister, legal member of The First-tier Tribunal for Scotland before Kayleigh Guthrie, 83 Main Street, Kilwinning.**

**M McAllister**

**K Guthrie**

# **Housing and Property Chamber**

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Determination: Housing (Scotland) Act 2006: Section 24

**Case Reference FTS/HPC/RT/18/1192**

**Mr and Mrs William Thomson, 7 Spinney Court, Locharbriggs, Heathhall, Dumfries, DG1 1XN per their Attorneys Sharron Knight and Lesley Fuentes (“the Tenant”)**

**Ms Annie McCormick, The Orchard, Amisfield, Dumfries, DG1 3LW per her Attorney Peter Murray (“the Landlord”)**

**Strategic Housing Services, Dumfries and Galloway Council, Council Offices, Buccleuch Street, Dumfries, DG1 2AD (“the Third Party Applicant”).**

**7 Spinney Court, Locharbriggs, Heathhall, Dumfries, DG1 1XN registered under Title Number DMF4865 (“the Property”).**

Tribunal Members: Martin McAllister (Legal Member) and Donald Wooley, Chartered Surveyor, (Ordinary Member)

### **Background**

1. By application received by the Tribunal on 22<sup>nd</sup> May 2018, the Third Party Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland (the tribunal) for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 as amended (the 2006 Act). The application is in terms of Section 22 (1A) of the 2006 Act. The Application was accompanied by a number of photographs of the Property.

2. The Application by the Third Party stated that the Property does not meet the repairing standard set out Section 13 of the 2006 Act. It states that The Property is not wind and watertight and in all other respects reasonably fit for human habitation, that the structure and exterior (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order, that the installations in the

Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order and that any fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order.

The Third Party Applicant refers in the Application to specific matters:

"The ridge tiles on the roof are raised, exposing a considerable gap that will allow the ingress of wind and rainwater into the building,

There is rainwater ingress around the chimney structure into the attic space below,  
The wooden structure around the roof of the front porch is rotten and requires to be replaced,

The central heating boiler has developed a fault over the past three months that requires regular resetting whenever the boiler fails, leaving the tenants with no heating or hot water periodically,

The gutters are blocked with vegetation. Rainwater overflows over the side of the guttering rather than discharging via the drop pipes."

3. On 29<sup>th</sup> June 2018 parties were advised that the President of the Tribunal had decided to refer the matter to a tribunal for determination. The notification to parties was in terms of Schedule 2, Paragraph 4 of the 2006 Act.

4. On 12<sup>th</sup> July 2018 Ms Sharron Knight emailed the Tribunal and indicated that she and her sister Ms Lesley Fuentes had a Power of Attorney in respect of the Tenant and that they would both be attending the tribunal Hearing on 10<sup>th</sup> August 2018.

5. On 18<sup>th</sup> July 2018 Messrs Walker & Sharpe, Solicitors wrote to the Tribunal and enclosed written representations on behalf of their client Peter Murray as Attorney of Ms Annie McCormick. The written representations were extensive. They set out the background to the tenancy. They state that Mrs Thomson is the sister of the Landlord and that the tenancy has endured since 1<sup>st</sup> December 1996. A copy of the tenancy agreement was before the tribunal. The Landlord's representations state that until approximately 2016 the Tenant generally attended to most repairs to the Property and that alterations had been carried out without the consent of the Landlord or the benefit of the necessary Local Authority consents. The representations stated that approximately two and a half years ago the Tenant demanded that the Landlord carry out maintenance and repair of the Property which had previously been undertaken by the Tenant. They state that the Landlord decided to increase the rent which had not been done since the tenancy had commenced and that the Tenant was advised that the rent was to be £400 per month which was less than the Landlord considered the market rent to be. The representations detail issues that the Landlord's Attorney considers he faced in arranging access to the Property to have repairs undertaken. They also state that the Tenant had not contacted the Landlord's Attorney with regard to any defects with the roof and the gutters. The representations state that a roofing contractor is able to start work on 20<sup>th</sup> August 2018 provided that the Tenant allows access.

The representations refer to Section 13 (1) (e) of the 2006 Act and state that it is not considered that it is applicable to the Property because the furniture is owned by the tenants. (In its deliberations the tribunal noted that the Application did not state that it

was alleged that the Property failed to meet the repairing standard in terms of this Section of the 2006 Act).

6. The members of the tribunal attended at the House on 10<sup>th</sup> August 2018 for an inspection. Mr Robert Rome and Mr Adam Black of Dumfries and Galloway Council were present. Mr and Mrs Thomson were present and were accompanied by Ms Lesley Fuentes, daughter and Attorney of the Tenant.

7. The Property comprises a two storey semi-detached house originally built by and on behalf of the local authority around 1960. The property is situated within a cul de sac location where surrounding houses are of a similar style and construction.

The house is of traditional construction with brick outer walls rendered externally with rough cast, under a pitched steel framed roof clad externally with concrete interlocking tiles.

A schedule of photographs by the ordinary member is attached.

## 8. Findings on Inspection

The inspection of the Property was undertaken following a lengthy period, extending to several weeks, of predominantly dry and warm weather.

8.1 As viewed from the front, the ridge tiles of the roof appear slightly uneven (Photograph 3). From the rear there is clear evidence that two of the ridge tiles have become raised and appear to be supported from below by a "block" of stonework / concrete. (Photograph 2). When viewed from within the attic there is visible daylight at this area, signs of "windblown" debris and damp staining although was dry at the date of inspection. (Photograph 9). It is possible that the configuration of the ridge tiles in this format may have been deliberate rather than storm damage, possibly to increase ventilation to the roof void. If so it is an unsatisfactory arrangement and additional ventilation, should, if necessary be provided by specific ventilation tiles or other appropriate means.

8.2 Viewed from ground level the chimney head shows signs of general wear commensurate with a building of this age and design (photograph 4). There is, particularly on the front elevation of the chimney, a visible covering of moss. Within the roof space there are, surrounding the chimney head and on the sarking panels, areas of damp staining. These were randomly tested and established to be dry at the date of inspection. (Photographs 10 – 14).

Having regard to the recent hot dry weather the tribunal were unable to confirm if the damp staining around the chimney head, completely dry at the time of inspection, was entirely historic or as a result of general wear and tear at the chimney head flashing / rendering.

8.3 The timber fascia boarding at the front porch projection displays evidence of decay and blistered paintwork. (Photograph 8)

8.4 eaves gutters are of cast iron construction, almost certainly the original, and are corroded. Vegetation is evident in the guttering on both the front and rear roof pitches and at the front porch projection. (Photographs 5-7)

8.5 On arriving at the property, the tribunal were informed by the tenant that the problems highlighted in the original application, as they relate to the central heating boiler, have now been resolved to their satisfaction.

### **Additional Observations**

The external fabric of the building displays general evidence of wear common to many properties of this age and design. The roof covering is the original and it was noted that both roof pitches have been affected by a covering of moss, particularly evident on the front roof pitch.

Within the attic there is considerable damp staining, dry at the date of inspection. A significant proportion has clearly been the result of penetrating damp / water ingress particularly noticeable around the chimney head area, as identified in the original application to the Tribunal, and below the raised / ill fitting ridge tiles. When this penetrating damp occurred is unclear.

Historically the damp staining within the attic may also have been compounded by condensation which, should it occur, will only be visible during periods of cold weather. This does not form part of the Third Party application to the Tribunal.

## **9. The Hearing**

Following the Inspection, a Hearing took place at Lochvale House, Georgetown Road, Dumfries.

Mr Robert Rome and Mr Adam Black were present. Mr Peter Murray, Attorney of the Landlord was present and was represented by Ms Shannon, Gibson, Solicitor from Messrs Walker and Sharpe. Ms Sharron Knight and Ms Lesley Fuentes, Attorneys of the Tenant were present.

## **10. Preliminary Matters.**

It was agreed by parties that there was now no need for the tribunal to consider any defects to the boiler because that matter had been satisfactorily resolved.

Mr Rome said that he did not intend to lead any evidence and invited the tribunal to come to its Determination based on the inspection of the Property and the photographs he had submitted with the application.

Ms Gibson said that her client does not dispute that repairs are necessary and said that the issues with the roof and gutters had only been brought to her client's attention by Mr Rome and not by the Tenant. She said that, when he became aware of the issues with the roof and gutters complained about by the Tenant, he had instructed a contractor who had not been able to gain access to the Property because of refusal or delay by the Tenant to facilitate this. Ms Gibson referred the tribunal to the written representations which had been lodged.

## **11. Evidence**

Mr Murray said that his contractors had been denied access to the Property and that he was willing to have any necessary repairs carried out. He said that he has arranged for a contractor to attend at the Property on 20<sup>th</sup> August 2018 to assess what work requires to be done and to commence it.

The Attorneys for the Tenant indicated that this date was acceptable and Mr Murray and Ms Knight agreed that they would each be the contact points for any future arrangements regarding works requiring to be carried out and for arrangements to be made in respect of contractors.

Mr Murray said that he had no information about what work had been done to the roof of the Property in the past and whether or not any attempt had been made to combat condensation in the roof space by raising the level of ridge tiles. He said that he did not know if there had been any condensation issues in the past.

## **12. The Issues**

Sections 13(1) (a),(b),(c) and (e) of The 2006 Act provide that the house must be wind and watertight and in all other respects reasonably fit for human habitation, the structure and exterior (including drains, gutters and external pipes) must be in a reasonable state of repair and in proper working order, that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water must be in a reasonable state of repair and in proper working order and that any fixtures, fittings and appliances provided by the landlord under the tenancy must be in a reasonable state of repair and in proper working order.

The specific issues which the tribunal required to address were those detailed in the application.

## **13. Findings**

The tribunal considered the relevant elements of the repairing standard as set out in the 2006 Act and it found that the Property fails to meet it.

13.1 The tribunal found that the roof was defective and was not in a reasonable state of repair and wind and watertight.

13.2 The tribunal found that the timber fascia boarding at the front porch was rotten and was not in a reasonable state of repair.

13.3 The tribunal determined that it was not required to make any decision with regard to the central heating boiler.

13.4 The tribunal had no evidence before it that any fixtures, fittings and appliances provided by the Landlord were not in a reasonable state of repair and in proper working order.

13.5 The tribunal found no evidence of a current issue with water ingress around the chimney structure into the attic space below.

13.6 The tribunal found that there was some vegetation in the gutters.

#### **14. Reasons**

The tribunal had regard to what it had found at the inspection, the written representations submitted by the Landlord and the evidence of Mr Murray. The tribunal could come to no view with regard to the matters raised by Mr Murray in connection with access but noted that Mr Murray and the Tenant's Attorney had agreed that contractors would attend the Property on 20<sup>th</sup> August 2018 to assess and commence the work and that Mr Murray and Ms Knight had agreed arrangements for future contact in relation to access for repairs.

#### **15. Determination**

The tribunal determined to make a repairing standard enforcement order in the following terms:

- (1) Instruct a suitably qualified contractor to inspect the ridge tiles and chimney head, in order to identify and report on the cause of the damp staining within the roof void and detail the extent of any necessary remedial action. Thereafter the contractor should complete all necessary repairs to remedy the dampness and any associated defects. (Sections 13 (1) (a) and 13 (1) (b) of the 2006 Act).**
- (2) Renew or repair all sections of decayed timber fascia boarding at the front porch projection and redecorate as necessary. (Section 13 (1) (b) of the 2006 Act).**
- (3) Remove all debris and vegetation from the rain water goods and ensure that they are returned to good working order and free from defects. (Section 13 (1) (b) of the 2006 Act).**

**The Landlord requires to comply with the repairing standard order by 30<sup>th</sup> September 2018.**

**In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

**Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding**



**the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

M McAllister

Martin Joseph McAllister,  
Solicitor, legal member of  
Tribunal.  
13<sup>th</sup> August 2018

**7 Spinney Court Heathhall Dumfries DG1 1XN**

**Schedule of Photographs taken at the inspection on 10<sup>th</sup> August 2018**



**1:- Entrance & External View**



**2:- Ridge tiles from rear**



**3:- Front roof pitch and ridge tiles**



**4:- Chimney head & front roof pitch**



**5:- Eaves gutters front**



**6:- Eaves gutters Rear**



**7:- eaves gutters front porch**



**8:- Timber fascia at porch projection**





**9:- Below raised ridge tile in attic**



**10:- Sarking & insulation in attic**



**11:- Staining by chimney - dry**



**12:- Staining at sarking – dry**



**13:- Staining chimney plaster – dry**



**14:- Staining at sarking - dry**